

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-5938**

**PETITION OF DAVID SHAOOL**  
(Hearing held November 5, 2003)

**OPINION OF THE BOARD**

(Effective Date of Opinion: December 19, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Montgomery County Zoning Ordinance (Chapter 59, Montgomery County Code, 1994, as amended). The petitioner proposes to construct a new single-family dwelling that requires a variance of 50.48 feet as it is within forty-seven (47) feet of the established front building line, in accordance with Section 59-C-1.323(a). The required established front building line is 97.48-foot.

The subject property is Lot 47, Block B, Willerburn Acres Subdivision, located at 7715 Mary Cassatt Drive, Potomac, Maryland 20854, in the R-90 Zone. (Tax Account No. 04/03144793).

Alan Weitzner, a confronting neighbor, appeared at the public hearing in opposition to the variance request.

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The property is a trapezoid-shaped lot consisting of about 21,740 square feet. The property has about 122 feet of frontage on Mary Cassatt Drive, which curves inward at the front of the property. The west side lot line is about 202 feet long, while the east side lot line is about 165 feet long. The rear lot line is 125 feet wide.
2. The property is unimproved. The property slopes down generally from the northwest corner to the southeast. A Category I Conservation Easement is located at the rear of the property, extending to approximately 35 feet from the rear lot line along most of the rear yard, and to approximately 60 feet from the rear lot line at the northwestern corner of the lot.
3. The petitioner proposes to build on the property a two-story single-family dwelling about 47 feet from the front lot line. The house will be about 70 feet wide and 45 feet deep; with an attached garage, the entire structure will be about 65 feet deep. The house will be situated 70 feet from the rear lot line and 35 feet from the conservation easement. If the house were to

be located 97.48 feet from the street, it would encroach about 20 feet into the rear setback and 30 feet into the conservation easement.

4. The property is wider but shallower than the other lots in the vicinity (see Exhibit No. 10). Houses on lots within 300 feet of the Property along the same side of Mary Cassatt Drive are set back from the street the following distances:

<u>Lot</u>	<u>Setback</u>
41	46.4'
42	46.7'
43	81.1'
44	109.7'
5	47.1'
18	<u>317'</u>
Avg.:	97.48' <sup>1</sup>

Lot 18, which adjoins the property to the west, is a “through lot,” in that it has frontage on both Mary Cassatt Drive at its south end and Gainsborough Road to the north. It is more than twice as long as any of the lots in the neighborhood. The house on Lot 18 is situated about 50 feet from and faces Gainsborough Road. There are no other “through lots” in the area. Homes to the east of the property and across Mary Cassatt Drive are set back a comparable or closer distance to the street than the proposed dwelling.

## **FINDINGS OF THE BOARD**

Based upon the petitioner’s binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements of Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner proposes to construct on the property a reasonably sized dwelling that is compatible in size to the other homes in the neighborhood. Because the property is shallower than any other property in the area, however, the petitioner is unusually restricted in the amount of space in which to build the house while preserving a reasonable amount of rear yard space available for his use. The Category I Conservation Easement located at the rear of the property further restricts the useable space. The strict application of the 97.48' established front building line requirement would require the house to be located within both the rear lot line setback and the conservation easement areas.

The Board further notes that the calculation of the established building line in this case is skewed by the unique dimensions of Lot 18, which is unusually

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<sup>1</sup>The established building line for the Property is determined under Section 59-A-5.33 as the average setback of all buildings within 300 feet of the Property along the same side of the street.

deep. Additionally, Lot 18 is the only through lot in the neighborhood and its dwelling fronts on another street. The Board finds that these are exceptional circumstances that are peculiar to the property and that the strict application of the regulations would result in a practical difficulty to the petitioner.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

Rather than encroach into the rear lot line setback and conservation easement area, the petitioner proposes to locate the house 47 feet from the front lot line, which will enable the property to retain a useable rear yard that will be 35 feet deep. This front lot line setback is similar to several other homes in the immediate vicinity, and will provide the property with a reasonably-sized useable rear yard, as evidenced by other neighboring property owners. The Board finds that the variance requested is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and is consistent with the existing residential uses in the community. The Board finds that the variance will not impair the intent, purpose or integrity of the general plan or any approved master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The proposed dwelling will be set back from the front lot line a distance comparable to those of Lots 5, 41, 42. The house on adjoining Lot 18 is over 200 feet away and faces Gainsborough Road, and so will not be impacted by the structure. The proposed setback is comparable to that of the houses to the east of the property and across the street. The Board finds that the variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

Accordingly, the requested variance of 50.48 feet from the required 97.48 foot established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioner is bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such evidence and representations are identified in this Opinion.
2. Construction of the dwelling must be completed according to the plans entered in the record as Exhibit Nos. 4 and 5.

The Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Member Louise L. Mayer was necessarily absent and did not participate in this Resolution. On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the Board of Appeals  
for Montgomery County, Maryland  
this 19th day of December, 2003.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the approved variance must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County on accordance with the Maryland Rules of Procedure.